REMARKS

In response to the Office Action dated April 4, 2004, claims 8 and 16 have been canceled and claims 1, 11, 16 and 18-20 have been amended. Claims 1-7, 9-15 and 17-20 are in the case. The Applicants respectfully request reexamination and reconsideration of the present application.

Record is made of a telephonic interview between Applicants' attorney Edmond A. DeFrank and Examiner S. Ali on June 29, 2004. The Office Action of April 5, 2004, the cited references and the pending claims were briefly discussed. A proposed amendment modifying claims 1, 11 and 18 was discussed during the interview. Although no agreement was reached, the above amendments to the claims reflect the discussion between the Examiner and the Applicants' attorney during the interview.

The Office Action objected to claims 16 and 18 due to minor informalities

In response, the Applicants have amended claims 16 and 18 as suggested by the Examiner to overcome these objections.

The Office Action rejected claims 1-2, 4-7, 11-15 and 17-20 under 35 U.S.C. 102(e) as allegedly being anticipated by Tucker (U.S. Patent No. 6,223,204).

The Applicants respectfully traverse these rejections based on the amendments to the claims and the arguments below.

Tucker discloses a system that uses a mutex for adaptive thread blocking. In particular, Tucker discloses that the "...mutex protects data in memory and permits only one thread to access the data at a time." Although Tucker discloses "[T]he thread attempting to acquire the mutex is caused to sleep or spin according to the current running or not running status of the light weight process...", Tucker also continues to disclose that "[I]f the light weight process holding a mutex is running, then the thread attempting to acquire the mutex will spin. If the light weight process then holding a mutex is stopped, then the thread attempting to acquire the mutex will block or sleep until awakened.

In contrast, unlike Tucker, the Applicants' invention includes undispatching the program thread when the program thread has failed to acquire a lock **and** other program threads are waiting to run, dispatching the program thread and changing from an original priority of the program thread to the lower priority **if** the program thread

continually requests access **and** if there are no other program threads waiting to run **and** allowing the code module to spin at the lower priority and restoring the program thread to its original priority after the program thread either obtains the lock or is **forced** to sleep after some fixed period of time. Accordingly, since Tucker does not include all of these elements, Tucker cannot anticipate the claims. As such, the Applicants' respectfully submit that the rejection under 35 U.S.C. 102(b) should be withdrawn.

The Office Action rejected claims 8-10 and 16 under 35 U.S.C. §103(a) as being unpatentable over Tucker in view of Foote et al. (U.S. Patent No. 6,587,955). The Office Action also rejected claim 3 under 35 U.S.C. §103(a) as being unpatentable over Tucker in view of Farrell et al. (U.S. Patent No. 5,630,128).

The Applicants respectfully traverse these rejections because at least **one** of the Applicants' claimed elements are missing from or not taught in the cited references and the Applicant's invention has advantages not appreciated by the cited references.

Specifically, the cited references, when combined, are missing the Applicants' claimed **undispatching** the program thread when the program thread has failed to acquire a lock and other program threads are waiting to run and **dispatching** the program thread and changing from an original priority of the program thread to the lower priority if the program thread continually requests access and if there are no other program threads waiting to run. In addition, the combined references do not disclose the Applicants' **allowing** the code module to spin at the lower priority and **restoring** the program thread to its original priority after the program thread either obtains the lock or is forced to sleep after some fixed period of time.

Hence, the combination of the Tucker reference with either the Foote et al. or Farrell et al. references does **not** disclose all of the elements of the Applicants' claims, and thus, **cannot** render the Applicants' invention obvious. In Re Evanega. This **failure** of the cited references, either alone or in combination, to disclose, suggest or provide motivation for the Applicant's claimed invention indicates a lack of a prima facie case of obviousness (*MPEP 2143*).

Moreover, even though the combination of Tucker with Foote et al do **not** produce all of the elements of the claimed invention, as discussed above, these references **should not** even be considered together since there is no motivation to

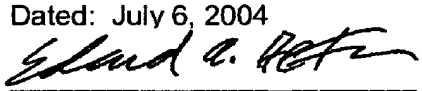
combine the cited references. Namely, Foote et al. teaches away from the Applicants' claimed invention, because, as admitted by the Examiner, "Foote, however, relates to elevating the priority of the executing thread...", which is very different than the Applicants' claimed dispatching the program thread and **changing** from an original priority of the program thread to the **lower priority** if the program thread continually requests access and if there are no other program threads waiting to run.

As such, this "teaching away" cannot be ignored by the Examiner. A reference should be considered as a whole, and portions arguing against or teaching away from the claimed invention must be considered. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.. Namely, "it is impermissible within the framework of 35 U.S.C. 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 353 F.2d 238, 147 USPQ 391 (CCPA 1965).

With regard to the dependent claims, since they depend from the above-argued respective independent claims, they are therefore patentable on the same basis. (MPEP § 2143.03).

In view of the arguments and amendments set forth above, the Applicant respectfully submits that the claims of the subject application are in immediate condition for allowance. The Examiner is respectfully requested to withdraw the outstanding claim rejections and to pass this application to issue. Additionally, in an effort to expedite and further the prosecution of the subject application, the Applicant kindly invites the Examiner to telephone the Applicant's attorney at (818) 885-1575 if the Examiner has any questions or concerns.

Respectfully submitted,
Dated: July 6, 2004



Edmond A. DeFrank
Reg. No. 37,814
Attorney for Applicants
(818) 885-1575 TEL
(818) 885-5750 FAX